

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN J. BYERS,

Appellant.

No. 38914-2-II

UNPUBLISHED OPINION

Armstrong, J. — Jonathan James Byers appeals his convictions for possession of a controlled substance and unlawful use of drug paraphernalia. The State concedes that the arresting officer lacked probable cause to arrest Byers. Accepting the State’s concession, we reverse Byers’s convictions and dismiss with prejudice.

Facts

Deputy Robert Nelson pulled over and detained Byers, believing Byers matched the description of a burglar. While detained, Nelson looked into Byers’s car and noticed a glass pipe, which Nelson thought to be contraband. Nelson seized the glass pipe from the car and conducted a field drug test. The drug test indicated that there was methamphetamine residue on the pipe. Nelson arrested Byers for possession of a controlled substance. At trial, Byers moved to suppress the evidence of the glass pipe and the field drug test results. The trial court denied Byers’s motion and allowed the State to admit the evidence.

Analysis

A warrantless search of a parked vehicle is permissible only when there is probable

cause for the search and exigent circumstances. *State v. Patterson*, 112 Wn.2d 731, 734, 774 P.2d 10 (1989). The inherent mobility of a vehicle does not constitute an exigent circumstance. *Patterson*, 112 Wn.2d at 734. Probable cause exists when there are facts or circumstances sufficient to establish a reasonable belief that a crime has been committed. *State v. Gaddy*, 152 Wn.2d 64, 70, 93 P.3d 872 (2004). Possession of drug paraphernalia is not a crime, but Washington state authorizes a custodial arrest for use of drug paraphernalia when used in the presence of the arresting officer. RCW 69.50.412; RCW 10.31.100.

Because Byers did not use the glass pipe in Nelson's presence, and from outside the car there was no indication Byers used the glass pipe for illegal purposes, Nelson lacked probable cause to arrest Byers.

The trial court erred when it admitted the State's evidence that Nelson obtained through a warrantless search. The State concedes error. We accept the State's concession, we reverse Byers's convictions, and dismiss with prejudice.

A majority of the panel having determined that his opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.404, it is so ordered.

Armstrong, J.

We concur:

Bridgewater, P.J.

Quinn-Brintnall, J.

